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June 16, 2003

**RECEIVED**

JUN 16 2003

PUBLIC SERVICE  
COMMISSION

Mr. Thomas M. Dorman  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

RE: Communications Workers of America and Local 463,  
International Brotherhood of Electrical Workers v. Kentucky  
ALLTEL, Inc., Administrative Case No. 2003-00190

Dear Mr. Dorman:

Enclosed is the Motion to Dismiss and Answer of Kentucky ALLTEL, Inc. in the above-referenced case. An original and eleven (11) copies are enclosed. Please file-stamp the extra copy and return it to me in the self-addressed, pre-stamped envelope I have enclosed for your convenience.

Thank you for your cooperation in this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

WYATT, TARRANT & COMBS, LLP

*Noelle M. Holladay*

Noelle M. Holladay

Enclosures

Motion to Dismiss and Answer (original and 11 copies)

cc: Steve Rowell (w/enclosure)  
Robert Priebe (w/enclosure)  
Kimberly K. Bennett (w/enclosure)  
James H. Newberry, Jr. (w/o enclosure)

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

JUN 16 2003

In the Matter of:

COMMUNICATIONS WORKERS OF AMERICA AND )  
LOCAL 463, INTERNATIONAL BROTHERHOOD )  
OF ELECTRICAL WORKERS )

COMPLAINANTS )

v )

KENTUCKY ALLTEL, INC. )

DEFENDANT )

PUBLIC SERVICE  
COMMISSION

CASE NO. 2003-00190

**MOTION TO DISMISS AND ANSWER OF KENTUCKY ALLTEL, INC. TO THE  
FORMAL COMPLAINT OF THE COMMUNICATIONS WORKERS OF AMERICA  
AND LOCAL 463, INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS**

COMES Kentucky ALLTEL, Inc. ("ALLTEL") and for its Motion to Dismiss and Answer to the Formal Complaint of Communications Workers Of America ("CWA") and Local 463, International Brotherhood Of Electrical Workers ("IBEW") (the "Complaint"), states the following:

**MOTION TO DISMISS**

1. On May 29, 2003, the Complaint was filed by the CWA and the IBEW (sometimes referred to herein as "Complainant(s)"). Thereafter, the Kentucky Public Service Commission ("Commission") issued its Order to Satisfy or Answer on June 5, 2003, a copy of which was subsequently served on ALLTEL. Therefore, this Motion to Dismiss and Answer are timely filed within ten (10) days from the date of service of said Order pursuant to K.A.R. 807 Chapter 5, Section 12.

2. Pursuant to 807 K.A.R. 5:001 Section 12(4)(a), which provides for dismissal of any formal complaint failing to establish a prima facie case, ALLTEL moves the Commission to dismiss the Formal Complaint, as the action is not properly before this Commission.
3. The Complaint was filed, coincidentally, only days prior to the Complainant CWA's initiation of a general strike against ALLTEL in connection with the parties' inability to reach agreement on a new labor contract between the parties. The allegations of the Complaint, on the other hand, solely relate to events and disputes with respect to the labor contract and memoranda of understanding that the Complainants entered into with ALLTEL's predecessor, Verizon South Inc. ("Verizon") (the "Labor Agreements"). The Complaint alleges that compliance with the Labor Agreements was a condition to the February 13, 2002 Commission approval of ALLTEL's acquisition of the Verizon Kentucky property (the "Approval Order") and asks the Commission to enforce that condition even after the Labor Agreements have expired.
4. K.R.S. §§ 278.020, 278.040, and 278.260 clearly set forth that the Commission's jurisdiction extends only to the rates or service of utilities. Therefore, the Complaint is defective because it does not establish or even allege that ALLTEL customers or ALLTEL customer rates or services have been adversely affected by any of the matters described in the Complaint or that ALLTEL has violated any law or Commission rule with respect to any ALLTEL rates or services. The Commission may not exercise jurisdiction over agreements between ALLTEL and its employees and substitute its judgment for that of management.
5. While ALLTEL did not fail to fulfill any condition of the Approval Order, in any event, the Labor Agreements that were the subject of the Approval Order expired on June 7, 2003. Therefore, the condition of the Approval Order with respect to the Labor Agreements also expired. Because the condition has expired and is without any prospective effect or

enforceability, Complainants' request that the Commission, "...compel Alltel's compliance with the Commission's February 13, 2003 order" (Complaint at page 2) must be denied. This relief is not available and the Complaint is moot. Complainants' request clearly demonstrates that the Complainants' motivation in filing this Complaint is not with respect to ALLTEL rates or services, but merely to try and accomplish through this Commission what it should be trying to accomplish in negotiations.

6. The Complaint fails to sufficiently allege or establish that ALLTEL has not complied with the Labor Agreements. As set forth in ALLTEL's Answer and Exhibit 1 to the Answer, which are incorporated herein by reference, ALLTEL's actions were consistent with all agreements of the parties, waived by the Complainants, or within exceptions provided in the Labor Agreements.
7. ALLTEL's actions were necessary to comply with the Approval Order imposed condition with respect to customer service quality and, therefore, the allegations are without merit. For example, the Complaint alleges that ALLTEL did not comply with the Labor Agreements with respect to the use of contract labor. However, the Complaint does not disclose the several very serious customer service affecting situations that ALLTEL faced immediately upon and subsequent to its acquisition of the Verizon property. Service orders had not been timely processed prior to closing; accordingly, ALLTEL immediately acquired almost 7000 held orders, in addition to receiving the regular substantial number of new orders or service change requests each day. These conditions, coupled with the complexities of simultaneously transitioning approximately 600,000 customer records and data from Verizon systems to ALLTEL's systems in a matter of five days, placed extraordinary demands on ALLTEL's systems and employees. Although the Complainants were well aware of these demands, they unreasonably and arbitrarily expected ALLTEL to use contract labor for only

three weeks, even though the in-house labor force, including 75 new technicians hired by ALLTEL subsequent to the closing, would not have been able to meet customer demands and customer service requirements. ALLTEL management exercised its rights and judgment to continue to use contract labor in addition to in-house labor to meet the service emergencies, transition conditions and to take care of ALLTEL's customers. Earlier this year, faced with the damage of thunderstorms, tornadoes, more recently an earthquake and the worst ice storm in many years that resulted in an extended state of emergency, again, ALLTEL management exercised its judgment to serve its customers consistent with its rights under the provisions of the Labor Agreements and Commission imposed requirements. ALLTEL has given and will continue to give its customer service needs and emergencies top priority.

8. The allegations of the Complaint are not properly before this Commission because they are, in several instances, and should be in the other instances, the subject of timely grievances or charges presented to ALLTEL, the National Labor Relations Board ("NLRB"), and/or are subject to arbitration requirements of the Labor Agreements. Indeed, in some instances the NLRA preempts state jurisdiction over Complainants' allegations and Article 12 of the CWA Labor Agreement provides that if the "Union and the Company fail to settle by negotiations any difference or dispute between them arising out of, pertaining to, or involving the interpretation, ... application, performance, or operation of any of the provisions of any contract, such grievance, difference or dispute shall be referred to arbitration upon request to the Company by the Union." The Complainants have not fulfilled this contractual obligation or are not willing to prosecute such arbitrations and to rely on the results, and, therefore, the Commission is respectfully without jurisdiction to decide the issue.
9. For the foregoing reasons, the Complaint is not properly before this Commission and should be dismissed with prejudice.

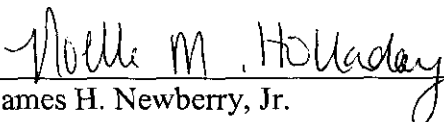
## **ANSWER TO FORMAL COMPLAINT**

10. ALLTEL denies the allegations of paragraph 1 of the Complaint and states affirmatively that Kentucky ALLTEL, not ALLTEL Kentucky, is the successor to Verizon property in Kentucky.
11. ALLTEL denies the allegations of paragraph 2, stating affirmatively that ALLTEL Kentucky, Inc. is a Kentucky corporation with offices and operations in Sheperdsville, Kentucky, was not a party to Case No. 2001-00399 and is not a party to the Labor Agreements.
12. ALLTEL admits that the Commission approved the transfer to ALLTEL of certain Verizon assets and included certain conditions in the Approval Order, but denies the other allegations of paragraph 3, stating affirmatively that the Approval Order speaks for itself and imposed service quality standards that are more demanding and more stringent than those imposed on any other telephone company operating in the Commonwealth.
13. ALLTEL denies the allegations of paragraph 4 of the Complaint and affirmatively states that attached hereto and incorporated by reference as Exhibit 1 are responses to the Declarations of Judy Dennis and Johnny Hunt. ALLTEL reserves the right to plead further in this matter, as may be necessary.
14. All allegations of the Complaint not expressly admitted herein are denied. The allegations of the Motion to Dismiss are incorporated herein by reference.

WHEREFORE, Kentucky ALLTEL, Inc., prays the Complaint be dismissed or denied because, among other reasons set forth above, it fails to allege a prima facie case, fails to set forth any matters with respect to which this Commission may or should exercise jurisdiction, the matters that are the subject of the Complaint are subject to the agreement of the parties to

arbitrate, and the allegations of the Complaint are or should be the subject of timely grievances or charges to ALLTEL or the NLRB, where jurisdiction properly lies.

Respectfully submitted,



James H. Newberry, Jr.

Noelle M. Holladay

WYATT, TARRANT & COMBS, LLP

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Lexington, KY 40507-1746

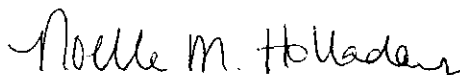
859.233.2012

Counsel for Kentucky Alltel, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by first class mail, postage prepaid, on this 16<sup>th</sup> day of June, 2003:

Robert M. Weaver  
Nakamura, Quinn & Walls, LLP  
2100 First Avenue N, Suite 300  
Birmingham, AL 35203



Counsel for Kentucky Alltel, Inc.

## EXHIBIT 1

### ALLTEL Response to Declarations of Judy Dennis and Johnny Hunt

1. Phone Marts (retail stores) - Until the receipt of the Complaint, ALLTEL reasonably believed that the parties had reached agreement with respect to the changes ALLTEL implemented regarding retail stores. ALLTEL fulfilled the provisions of the agreement which it believes it reached with Complainant on this issue (which in no way relates to ALLTEL's rates or services), and Complainants have not protested, complained, filed a grievance or otherwise made known dispute with respect to the retail store changes until the filing of the Complaint.
2. Living benefit - The "living benefit" was a feature unique to a Verizon life insurance policy that ALLTEL was not able to continue after the acquisition and which again does not pertain to ALLTEL's rates or services. ALLTEL did not succeed to Verizon's rights under the policy. This situation was known by the Complainants prior to the closing, but more importantly, this issue is moot and irrelevant because the memorandum of agreement (MOA) that addressed the living benefit expired and no employee apparently sought and was denied the use of this benefit prior to the expiration of the MOA. Further, the MOA provides that "all the terms and conditions" relating to the benefit "shall be determined by and at the sole discretion of the Insurance Carrier." The carrier, in its discretion, decided to not allow ALLTEL to continue the benefit.
3. Medical Plan availability - The Complaint asserts correctly that the only requirement of the Labor Agreements was for an 80/20 indemnity plan. While Verizon offered other plans, it was not required to do so, and, therefore, ALLTEL was not required to do so either. As required by the Labor Agreement, ALLTEL offered an 80/20 indemnity plan, but the Complainants, in their sole discretion, opted to accept another plan, the nationwide PPO. ALLTEL fulfilled all of its obligations. Moreover, Complainants knew what forms of health



care benefit would be available well over six months ago, and had not formally complained until filing of the Complaint.

4. Team Incentive Program - ALLTEL continued this Verizon program. While the relevant MOA indicates that the payment will be made “normally ... by mid-April,” this phrase does not impose an absolute deadline and is preceded by the indication that it will be paid “as soon as practicable after the calendar year results are known.” In this first year following the closing and the transition from Verizon to ALLTEL, when ALLTEL is still refining the prior calendar year results, it should be understood that although ALLTEL did not pay in April, its payment one month later in May, is reasonable, allowed and contemplated by the MOA. As to how the payment is calculated, while ALLTEL has tried to replicate the Verizon calculation, the MOA provides, “However, the Company does reserve the right to make modifications if such are deemed necessary,” and with respect to identified measures that the measures “and the method of their calculation are subject to modification by management.” Significantly, the Complaint indicates that these issues are subject to pending grievances and charges to the NLRB. While ALLTEL denies they have merit, they are being pursued through the forums and procedures specified in the Labor Agreements.
5. Contract Labor - The Complaint indicates that the contract labor issues are the subject of pending grievances in accordance with the provisions of the Labor Agreements. Again, while ALLTEL denies the grievances have merit, those proceedings, required by the Labor Agreements, have not been exhausted.
6. Personal lines of insurance - This issue can be answered simply by referring to the relevant MOA. Paragraph 3 of the MOA provides, “The Company reserves the right at any time, and from time-to-time, to modify or amend in whole or part, any and all provisions of the agreement with the Insurance Carrier, to change Insurance Carriers, or to terminate the

agreement with the Insurance Carrier.” It was known by the Complainants prior to closing that the relevant policy and this benefit were not transferable to ALLTEL from the Verizon policy and that, in any event, the policy was terminable at ALLTEL’s discretion. No grievance or charge was made by Complainants until the filing of the Complaint, and the issue is not properly included therein as it does not pertain to ALLTEL’s rates and service.

7. Grievance procedures – Complainants’ allegations are that ALLTEL is not abiding by the procedures of the contract with respect to grievances, including timely decisions. While the Complainant alleges that ALLTEL has not followed the provisions of the contract, Complainants have conveniently ignored the language of the same contract. The Labor Agreement specifies procedures to be followed by them, such as arbitration, in order to escalate a grievance, including the failure to timely decide a grievance.